

RESOLUTION NO. 15-06
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gresham ON THE
3rd DAY OF April, 2006.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH CHARLES A. DILLE, JR., TRUSTEE, AND BEAR CREEK CAPITAL, LLC FOR PROPERTY LOCATED IN SUGARCREEK TOWNSHIP.

WHEREAS, The City, Charles A. Dille, Jr., Trustee, the owner of property located in Sugarcreek Township, and Bear Creek Capital, LLC, the developer who intends to purchase the property have successfully negotiated a Pre-annexation Agreement to allow property to be annexed into the City; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into said agreement.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into a Pre-Annexation Agreement with Charles A. Dille, Jr., Trustee, and Bear Creek Capital, LLC to allow for the annexation of property located in Sugarcreek Township in accordance with the terms of said agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

PASSED THIS 3rd day of April, 2006.

C. Mark Kugler
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 15-06, passed by the Council of the City of Centerville, Ohio on the 3rd day of April, 2006.

Debra A. James
Clerk of Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into this ___ day of April, 2006 by, between and among the City of Centerville, an Ohio municipal corporation (the "City"), Charles A. Dille, Jr., Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, (the "Owner", or "Owners" should more than one property owner execute this Agreement as a party) and Bear Creek Capital, LLC, an Ohio limited liability company (the "Developer") under the following circumstances:

- A. Charles A. Dille, Jr., Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, currently holds fee simple title to approximately 70.5 acres of land located in Sugarcreek Township, Greene County, Ohio and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");
- B. Bear Creek Capital, LLC, or an affiliate, intends to purchase the Property from the Owner, pursuant to a contract of purchase, in order to develop a multi-use development project, including retail, office and residential components (the "Project");
- C. The City has reviewed a development plan for the Project, attached hereto as Exhibit "B" (the "Development Plan") and has determined that the Development Plan is in accord with the City's comprehensive land use plan;
- D. The Owner and Developer desire to annex the Property, as more particularly described on Exhibit "A" and as generally depicted on Exhibit "C", into the City in order to obtain the City's services and assistance in the development of the Property; and
- E. The Owner, Developer, and the City can mutually benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City, Owner, and Developer hereby agree as follows:

1. Annexation.

(a) The Developer agrees that it will obtain the signature of the Owner and will, at its own expense, prepare and file the necessary annexation petition or petitions with accompanying map or plat with the appropriate board of county commissioners. The Owner agrees that it will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation. The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. The Property sought to be annexed may be the subject of one or more annexation petitions and in a configuration as

agreed by the Owner, Developer, and the City and may include other property not owned by Owner. If the Property is annexed in several parts using separate petitions, the terms of this Agreement will apply to each separate petition. The Owner agrees that it will execute one or more annexation petitions, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law, and will not request the agent for petitioners to withdraw the annexation petition as long as this Agreement is in full force and effect. The petition will designate an agent for petitioners as agreed to by the City and Developer. The City agrees to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the appropriate board of county commissioners. A service resolution will set out those services that will be provided by the City upon annexation and will establish the approximate date when those services will be available.

(b) The Owner, Developer, and the City agree to cooperate and provide information necessary for the county commissioners to make their "review" of the annexation as required by Section 709.023 of the Ohio Revised Code. If, at the conclusion of the review process the county commissioners deny the annexation petition, the Owner agrees to file in the appropriate court a request for a writ of mandamus to compel the county commissioners to approve the annexation as set out in Section 709.023 of the Ohio Revised Code. The City agrees to seek standing to support any mandamus action filed by the Owner in its attempt to annex the Property into the City. The Owner, Developer, and the City agree to pursue the annexation and to exhaust all appeals.

(c) Should the annexation be approved, the Owner, Developer, and the City agree to process the annexation as provided by law subject to the terms of this Agreement.

(d) The Owner and Developer, at their expense, agree to file or arrange to be filed an annexation petition, map, and plat that comply with Section 709.023 of the Ohio Revised Code within twenty (20) days after the execution of this Agreement.

(e) If the purchase contract between Owner and Developer shall terminate and/or not be renewed pursuant to the terms thereof prior to the completion of the annexation of the Property, but the annexation process continues and some or all of the Property is ultimately annexed into the City, the Developer shall indemnify and hold the Owner harmless from any City income tax burdens (including any future City income taxes) resulting to it from the Property's inclusion in the City, for the period from the date of expiration or earlier termination of the purchase contract until the earlier to occur of the sale of the Property to another purchaser or August 3, 2010 (which is the first anniversary of the date of termination of the Charles Dille Trust).

2. Zoning.

(a) The Property sought to be annexed is currently shown on the zoning map of Sugarcreek Township as a planned unit development of mixed uses, including commercial, office, single and multi-family residential zoning and other possible mixed zoning uses. The City recognizes that the uses shown on the Development Plan attached hereto and made a part hereof are generally in line with the spirit of the comprehensive plan for the City if extended to the annexation area and the uses shown on the Development Plan are appropriate uses to be considered for the Property. The parties understand that the zoning will take place utilizing the regular process for processing an application for zoning in the City and there is no guarantee that any particular zoning will be granted. The City agrees that once an annexation petition has been approved by the appropriate board of county commissioners, the City will accept a zoning application for the Property covered by the annexation petition and will begin the administrative processing of such application, including any necessary hearings and other preliminary matters. The City understands that the Developer is desirous of obtaining B-PD, Business Planned Development and also, in part, as R-PD, Residential Planned Development, as described in the Development Plan as the ultimate end uses of the Property in the City.

(b) The City recognizes that once the annexation is placed before City Council by the City Clerk, the City has one hundred twenty (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property in accordance with the Development Plan approved through the planning and zoning process to a zoning that is acceptable to the Owner and Developer. At any time during the one hundred twenty (120) day acceptance period for the annexation, at the request of the Owner and/or Developer, the City itself may delay its acceptance of the annexation until the zoning and other matters are settled to the satisfaction of the Owner, Developer, and the City. If, for some reason, the zoning cannot be accomplished and/or the zoning is referred to the voters or defeated for any reason or other conditions of this Agreement cannot be met acceptable to the Owner and Developer, the City agrees that it will not annex the Property. If, however, the zoning is approved in accordance with the Development Plan developed through the Planning Commission and approved by City Council, the Owner and Developer are obligated to complete the annexation process. If the annexation vote occurs approving the annexation to the City and at the time of the annexation acceptable zoning has not been adopted as approved through the Planning Commission, then the City agrees that if acceptable zoning does not pass within thirty (30) days of such vote approving the annexation, it will reconsider such vote and reject the annexation. The City agrees, to the extent possible, to process the ordinance necessary to approve the annexation and zoning contemporaneously with the goal of deciding both issues at the same meeting.

(c) The Development Plan shall show the needed access to the Property from public streets and roadways, as well as establish a plan to erect adequate signage to identify the commercial and residential portions of the Property as permitted by the City's development code. The Owner, Developer, and the City acknowledge that the access to the Property is determined and controlled by the City and the Ohio Department of

Transportation. No exact access can be guaranteed by the City, but the City agrees to cooperate with Developer in the submission of any and all necessary permits for access to the Property or for the establishment of any utilities that may be necessary to be placed in the road right-of-ways. The parties also acknowledge and agree that certain of these road improvements are within "Public Improvements" which will be governed by Tax Increment Financing.

3. Water, Sewer, and Public Utilities. The Owner, Developer, and the City understand that water and sewer to the site will be provided by Greene County. The Developer has satisfied itself as to the adequacy, size, cost, timing and extension of such utilities to the development in question. The location and alignment of the water and sewer lines, as well as any other utilities to be provided to the site, must be approved by the City's engineer upon annexation and be based upon sound engineering principles. The City agrees that if there is a choice of locations, it will cooperate in the location and placement of the water and sewer lines and other utilities over which it may have control in a way that is most economically feasible and beneficial to the Developer. The City will cooperate with the Owner and Developer in obtaining any necessary utility easements and will extend to the Owner and Developer the right to place utilities in the public road right-of-ways, when such road right-of-ways are solely controlled by the City and that such grant will be without cost to the Owner or Developer for such access. The extent of the City's commitments with regard to utilities will be established and limited to those rights, privileges, and other items as set out in the City's service resolution.

4. Platting. Once the annexation to the City has been completed and the Development Plan approved as to zoning, a preliminary and final plat will be filed by the Owner/Developer. The City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations and the regular fees for such review will be applied.

5. Financing Improvements. The parties recognize that significant improvements may be needed to service the proposed development of the Property in the City, and, accordingly, the parties agree to undertake or participate in the following financing arrangements or mechanisms:

(a) Coincident with the City's approving the final plans for development of any portion of the Property that has been annexed to the City, the City shall as soon as practical take steps to present to the City Council legislation to create Tax Increment Financing (the "TIF Ordinance") to enable the City to collect up to the maximum amount of payments in lieu of taxes which may be generated from the new development without approval from a school district. The payments made in lieu of taxes will be applied by the City to recoup and apply to the costs associated with the construction of the necessary public improvements. Pursuant to the TIF Ordinance, the City and Developer shall enter into a public infrastructure agreement (the "Infrastructure Agreement"), pursuant to which the City and Developer agree to erect, construct and maintain Public

Improvements on the Property or which, in the opinion of the City, benefit or serve the Property or which have been deemed reasonably necessary by the City and the Developer. The TIF Ordinance shall also specify the use of service payments as provided in ORC Section 5709.42.

(b) The Developer and the City shall enter into a service payment agreement reasonably acceptable to Developer and the City (the "Service Agreement") setting forth the duties and obligations of a Tax Increment Financing District that does not involve the deprivation of any school district moneys.

(c) Upon request of the Developer, the City agrees that it will take such action as is necessary to issue Tax Increment Financing Bonds (the "Bonds") in order to pay the costs of the Public Improvements to be constructed on the Property and that the debt service on the Bonds will be paid solely from Service Payments (which means the Statutory Service Payments and any supplemental payments (the "Minimum Service Payments") as may be required by a Service Agreement. The Public Improvements to be covered by Tax Increment Financing shall include, but not be limited to, the installation of roads, utility lines, sidewalks, and other public infrastructure improvements deemed reasonably necessary by the Developer and the City.

6. Representations and Warranties of the City. The City hereby represents and warrants to Developer that:

(a) The City is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to its charter, and to perform its obligations hereunder;

(b) The City, acting by and through its agents, has taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and

(c) This Agreement is the valid and binding act of the City, enforceable against the City in accordance with its terms.

7. Representations and Warranties of the Owner/Developer. The Owner/Developer hereby represents and warrants to the City that:

(a) The Owner is the duly authorized owner of the Property to be included in the annexation petition;

(b) The Developer represents that it has an option or contract to purchase the Property and that the parties who have signed this Agreement have whatever authority is necessary to authorize their signatures;

(c) The Developer and Owner, acting by and through their agents, have taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same and the performance of the obligations of the City hereunder; and

(d) The Developer has satisfied itself that utilities which are outside the control of the City will be available in sufficient amounts, quantities, and timing so that the Developer can, in fact, complete the development as anticipated by this Agreement.

8. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

9. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

10. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

12. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

13. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, the Owner and the Developer, any lender providing financing to the Developer and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

14. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

15. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

16. Approvals. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

17. Binding Effect. This Agreement and all of the provisions herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

18. Entire Agreement/Merger. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written.

19. Survival. The representations, warranties and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

20. Notice. All notices, requests, consents, approvals, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by telegram, cable, e-mail or facsimile telephone transmission, if given below, or later provided, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Owner:	Charles A. Dille, Jr. Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, 5300 Wilmington Pike Dayton, OH 45440 Telephone: _____ Facsimile: _____
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with a copy to: John M. Cloud, Esq.
Rogers & Greenberg LLP
2160 Kettering Tower
Dayton, OH 45423
Telephone: (937) 223-8171
Facsimile: (937) 223-1649

Developer: Bear Creek Capital, LLC
9549 Montgomery Road, 3rd Floor
Cincinnati, OH 45242
Telephone: _____
Facsimile: (513) 793-5820
Attention: Mr. Greg Scheper

with a copy to: Joseph L. Trauth, Jr., Esq.
Keating, Muething & Klekamp, PLL
One East Fourth Street
Suite 1400
Cincinnati, OH 45202
Telephone: (513) 579-6515
Facsimile: (513) 579-6457

City: City of Centerville
100 W. Spring Valley Rd.
Centerville, OH 45458
Attention: City Manager
Telephone: (937) 433-7151
Facsimile: (937) 435-8720

with a copy to: City of Centerville
100 W. Spring Valley Rd.
Centerville, OH 45458
Attention: City Attorney
Telephone: (937) _____
Facsimile: (937) _____

[Signatures Appear on the Following Page]

The foregoing instrument was executed this ___ day of April, 2006.

DEVELOPER:

BEAR CREEK CAPITAL, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____

OWNER:

Charles A. Dille, Jr.
Trustee, under a certain Amended and
Restated Revocable Living Trust, dated
January 16, 1998,
5300 Wilmington Pike
Dayton, OH 45440

CITY:

CITY OF CENTERVILLE, an Ohio municipal
corporation

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) SS.
COUNTY OF GREENE)

BEFORE ME, a Notary Public in and for such County and State, personally appeared Charles A. Dille, Jr., Trustee, who acknowledged that he was authorized to and did sign the foregoing instrument, and that the same is the free act of such persons.

IN TESTIMONY, I set my hand and official seal this ____ day of April, 2006.

Notary Public (Seal)

STATE OF OHIO)
) SS.
COUNTY OF GREENE)

BEFORE ME, a Notary Public in and for such County and State, personally appeared _____, the City Manager of the City of Centerville, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such City of Centerville, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such City of Centerville.

IN TESTIMONY, I set my hand and official seal this ____ day of April, 2006.

Notary Public (Seal)

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

BEFORE ME, a Notary Public in and for such County and State, personally appeared _____, the _____ of Bear Creek Capital, LLC, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such company, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such Company.

IN TESTIMONY, I set my hand and official seal this ____ day of April, 2006.

Notary Public (Seal)

Exhibit A

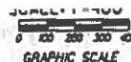
[Insert Property Description]

Exhibit B

[Development Plan]

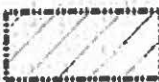
173.135 ACRES

SECTION 9 TOWN 2 RANGE 6 M.Rs.
SUGARCREEK TOWNSHIP
GREENE COUNTY, OHIO



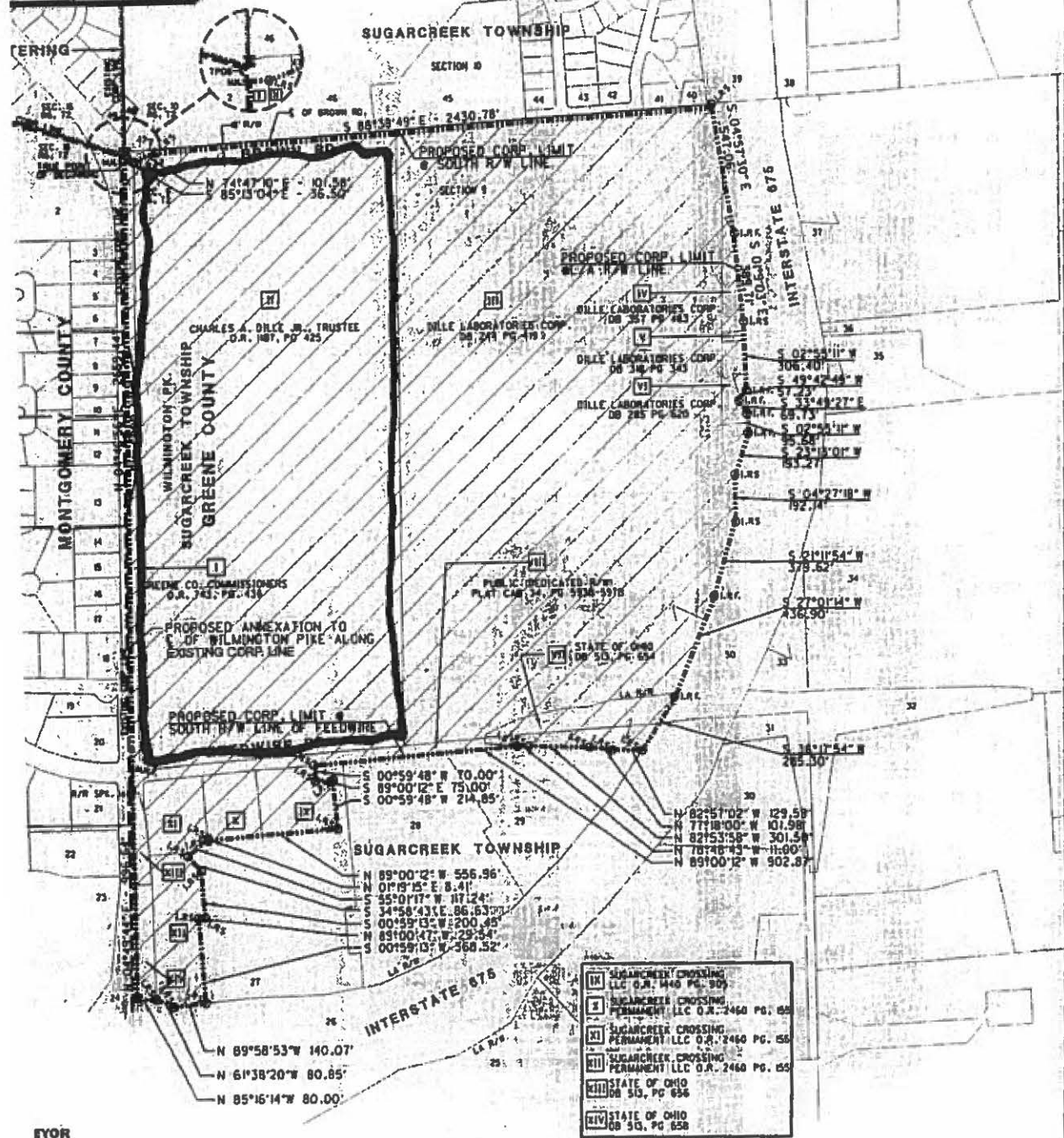
LEGEND

- R/R SPL. (S)
- MMS. MAG. NAIL (S)
- M.H.F. NAIL (Fd)
- I.R.S. IRON PIN (S)
- I.R.F. IRON PIN (Fd)
- ☐ IRON PIN IN MON. BOX (Fd)



AREA TO ANNEXED

Charles Dille Trustee
EXHIBIT C



- IX SUGARCREEK CROSSING LLC O.R. 1440 PG. 509
- X SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
- XI SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
- XII SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
- XIII STATE OF OHIO O.R. 513, PG. 656
- XIV STATE OF OHIO O.R. 513, PG. 656

WE BASED UPON A FIELD SURVEY PERFORMED BY ON MAY 18, 2005, EXISTING DEEDS AND PLATS OF OFFICE CALCULATIONS BY LJB INC. IN MARCH, 2006. SURVEY ARE PREPARED FOR ANNEXATION PURPOSES ONLY, FOR LAND CONVEYANCE.

7/6/06
G. SURVEY 16596 DATE



- NOTES
1. THE ANNEXATION TERRITORY SHARES A CONTIGUOUS BOUNDARY WITH THE CITY OF CENTERVILLE FOR A DISTANCE OF 3656.28 FEET, WHICH IS 28.90% OF THE PERIMETER OF THE PROPOSED ANNEXATION TERRITORY, ETC.
 2. THE ANNEXATION WILL NOT CREATE AN UNINCORPORATED AREA OF THE TOWNSHIP THAT IS COMPLETELY SURROUNDED BY INCORPORATED LAND.
 3. BASIS OF BEARINGS: OHIO STATE PLAIN COORDINATE SYSTEM, SOUTH ZONE (NAD 83)
 4. OCCUPATION GENERALLY AGREES WITH THE PERIMETER DESCRIBED HEREON.

LJB Inc.
1100 Research Blvd.
P.O. Box 20146
Dayton, OH 45420-0246
(937) 259-3000 fax
(937) 259-3100 fax
ljbinc.com